

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

KABINS FAMILY LIMITED PARTNERSHIP,)
a Nevada Limited Partnership; LORI)
C. KABINS, as Trustee for LORI C.)
KABINS SEPARATE PROPERTY TRUST, a)
Nevada Trust,)
Plaintiff,)

vs.)

CASE NO.
2:09-CV-1125-GMN-RJJ

CHAIN CONSORTIUM, a Nevada General)
Partnership; 3900, LLC, a Nevada)
Limited-Liability Company; 99th &)
INDIAN SCHOOL, LLC, a Nevada)
Limited-Liability Company; 99th &)
INDIAN SCHOOL MANAGEMENT, LLC, a)
Nevada Limited-Liability Company;)
BENESSERE, LLC, a Nevada Limited-)
Liability Company; BENESSERE)
MANAGEMENT, LLC, a Nevada Limited-)
Liability Company; TODD W. BERGMAN,)
an individual; BUCKEYE CANAMEX 77)
ONE, LLC, a Nevada Limited-Liability)
Company; BUCKEYE 80 WEST THREE, LLC,)
a Nevada Limited-Liability Company;) . . .

AMENDED NOTICE OF TAKING
DEPOSITION UPON ORAL
EXAMINATION

VOLUME II

DEPOSITION OF MARK KABINS, M.D.

Taken at the United States District Court
333 Las Vegas Boulevard, Third Floor, Attorneys' Lounge
Las Vegas, Nevada 89101

On Wednesday, May 4, 2011
9:00 a.m.

Reported by: Renee Silvaggio, CCR No. 122

1 CAPRI I, LLC, a Nevada Limited-)
2 Liability Company; CAPRI II, LLC,)
3 a Nevada Limited-Liability)
4 Company; JEFF CHAIN, an)
5 individual; LINDA CHAIN, an)
6 individual; JEFF AND LINDA CHAIN,)
7 as Trustees for the JEFF & LINDA)
8 CHAIN FAMILY TRUST, a Nevada)
9 Trust; CIPRIANI, LLC, a Nevada)
10 Limited-Liability Company;)
11 CIPRIANI MANAGEMENT, LLC, a Nevada)
12 Limited-Liability Company;)
13 COTTONWOOD RETAIL, LLC, a Nevada)
14 Limited-Liability Company; GEIII,)
15 LLC, also known as GE, III, LLC,)
16 a Nevada Limited-Liability)
17 Company; GILA BEND 384, LLC, a)
18 Nevada Limited-Liability Company;)
19 EDWARD GUTZMAN III, an individual;)
20 INNOVATIVE ASSETS, LLC, a Nevada)
21 Limited-Liability Company; J.)
22 MATTHEW KAMMEYER, an individual;)
23 KAN INVESTMENTS, LLC, a Nevada)
24 Limited-Liability Company; GABRIEL)
25 MARTINEZ, ESQ., an individual;)
MICHAEL'S PLAZA, LLC, a Nevada)
Limited-Liability Company;)
MILLENNIUM CONSTRUCTION, INC.,)
doing business as MCI, a Nevada)
Corporation; MILLENNIUM COMMERCIAL)
PROPERTIES, LLC, a Nevada)
Limited-Liability Company;)
MILLENNIUM PROPERTIES &)
DEVELOPMENT, INC., a Nevada)
Corporation; MODERN MANAGEMENT,)
INC., a Nevada Corporation;)
PHOENIX 83RD, LLC, a Nevada)
Limited-Liability Company; ALLYN)
F. POVILAITIS, also known as)
ALLYN F. POVILAITIS, an)
individual; RCRE, LLC, a Nevada)
Limited-Liability Company; and)
T.W.B. ENTERPRISES, INC., a)
Nevada Corporation,)
)
Defendants.)
)

1 APPEARANCES:

2 For the Plaintiffs Kabins Family Limited Partnership and
3 Lori C. Kabins, as trustee for
Lori C. Kabins Separate Property Trust:

4 J.D. LOWRY, ESQ.
5 Dickinson Wright, PLLC
6 City Center West
7 7201 West Lake Mead Boulevard
Suite 503
Las Vegas, NV 89128
(702) 541-7891

8 For the Plaintiff Mark Kabins, M.D.:

9 JOHN SPILOTRO, ESQ.
10 Spilotro & Kulla
11 626 South Third Street
12 Las Vegas, Nevada 89101
(702) 385-4994

13 For the Defendants Benessere, LLC; Gila Bend, LLC; and
14 Cipriani, LLC:

15 ALBERT D. MASSI, ESQ.
16 CHAD A. BOWERS, ESQ.
17 Albert D. Massi, LTD
3202 West Charleston Boulevard
Las Vegas, NV 89102
(702) 878-8778

18 For the Defendants Edward Gutzman; Cipriani Management, LLC; and
19 Benessere Management, LLC;
20 DBA Gutzman, GEIII, LLC; DBA GE, III, LLC.

21 BARBARA I. JOHNSTON, ESQ.
22 Irsfeld & Associates, LLC
1700 West Horizon Ridge Parkway
Suite 206
Henderson, NV 89012
23 (702) 734-0400
24
25

1 APPEARANCES:

2 For the Defendants Todd W. Bergman and T.W.B. Enterprises:

3 MARIO P. LOVATO, ESQ.
4 Lovato Law Firm
5 619 South Sixth Street
6 Las Vegas, Nevada 89101
7 (702) 979-9047

8 For the Defendants Gabriel Martinez; 99th & Indian School, LLC;
9 99th & Indian School Management, LLC; Capri I, LLC; Capri II, LLC;
10 and Phoenix 83rd, LLC:

11 WILLIAM KERRY SKAGGS, ESQ.
12 Law Office of William Kerry Skaggs
13 808 South 7th Street
14 Las Vegas, Nevada 89101
15 (702) 445-6700

16 For Third Party Defendants Main and Main Amundson:

17 LISA J. ZASTROW, ESQ.
18 Kaempfer Crowell Renshaw
19 Gronauer & Fiorentino
20 8345 West Sunset Road
21 Suite 250
22 Las Vegas, Nevada 89113-2092
23 (702) 693-4202

24 Also present:

TODD BERGMAN

25 BRIDGET FOLEY, paralegal

DAWN BECK, Videographer
Beck Video Productions

* * * * *

1 BY MR. MASSI:

2 Q I don't want to know any conversation, just did you
3 review the Complaint?

4 A I looked at the Complaint.

10:35AM 5 Q Did you read the whole thing?

6 A I don't recall if I read the whole thing.

7 Q You don't know what you're alleging as against
8 Mr. Bergman though?

9 A That's not what you asked me.

10:35AM 10 Q I know what I asked you, Doctor. Don't correct me.

11 I'll -- I'll correct myself when necessary, Doctor. I'm not here
12 to be instructed by you.

13 What I asked you was: Do you know the allegations you
14 made against Mr. Bergman? That's all I asked you.

10:36AM 15 A Uh, as written in the Complaint?

16 Q Yes.

17 A I'd have to review the Complaint in order to tell you.

18

19 (The following question has been certified
10:36AM 20 and referenced as Certified Question 2.)

21

22 BY MR. MASSI:

23 Q Well, then without referencing the Complaint or reviewing
24 it, I have it here, and I don't want to spend the time going

10:36AM 25 through 156 pages and waste another day, but tell me what you

1 think Mr. Bergman did wrong that -- that precipitated your need to
2 sue him?

3 A Okay.

4 MS. LOWRY: And I'll instruct the witness not to answer
10:36AM 5 to the extent that the answer would disclose confidential
6 attorney/client communications.

7 MR. MASSI: I agree, Counsel.

8 BY MR. MASSI:

9 Q Tell me what you think he did wrong. I don't care what
10:36AM 10 your attorney thinks.

11 A So in part.

12 Q Say it again.

13 A I said: So in part.

14 Q In part?

10:36AM 15 A He told me, one, he was not going to be paid anything
16 until these investments concluded, and he would be -- be paid in
17 arrears rather than up front.

18 He told me that on numerous occasions.

19 Q Anything else?

10:37AM 20 A He also stated that he trusted the investment entities,
21 that he recommended it strongly and continued to recommend the
22 investments and additional investments without having -- it was my
23 understanding that he had knowledge of the specific investments,
24 that he had an understanding, and he was functioning as an
10:37AM 25 individual where he makes money to encourage me to -- propose that

1 I buy -- not I, but the entities purchase the -- the limited
2 partners, in the various investments.

3 And he took a position of -- of knowledge in stating I'm
4 familiar with this and the investments and -- and I'm familiar
10:38AM 5 with the people and I know them, and I will -- am encouraging you
6 and -- and telling you that you should -- I would advise that you
7 buy these investments.

8 Q Anything else?

9 A I've learned a number of things through
10:38AM 10 attorney/client afterwards.

11 Q Don't want to know that. Don't want to know.

12 MR. LOVATO: All right. We wouldn't want to know the
13 actual communication. Things that he knows, we don't have a
14 problem knowing.

10:38AM 15 MR. BOWERS: Can -- can I just suggest something? I
16 don't -- I don't want to double-team Mr. Kabins, but I think we
17 might agree on this, Miss Lowry.

18 MS. LOWRY: Tell me what you're proposing.

19 MR. BOWERS: What I'm proposing is that if -- if
10:38AM 20 Mr. Kabins has an understanding that a certain act of
21 Mr. Bergman's is actionable, I don't care where that came from, I
22 think that's discoverable.

23 If it would require him to say: My attorney told me
24 this -- that shouldn't be commented upon.

10:38AM 25 Do you agree or disagree with that?

1 MS. LOWRY: I'm not sure I understand the parameters of
2 what you're setting out.

3 I -- and I apologize if --

4 MR. BOWERS: Let me try again.

10:39AM 5 MS. LOWRY: Okay.

6 MR. BOWERS: Mr. Massi's question to Dr. Kabins is: You
7 are suing Mr. Bergman because?

8 He's listed a few things.

9 MS. LOWRY: Uh-huh.

10:39AM 10 MR. BOWERS: There's some other things.

11 MS. LOWRY: Uh-huh.

12 MR. BOWERS: They may or may not have come from a
13 discussion with your office. Okay?

14 Certainly we would not want him to say: My attorney told
10:39AM 15 me this.

16 MS. LOWRY: Correct.

17 MR. BOWERS: That's inappropriate.

18 MS. LOWRY: Uh --

19 MR. BOWERS: However, if he has knowledge that some other
10:39AM 20 action is actionable, he can comment on that.

21 What he -- what he should not say is -- if Mr. Massi says
22 why do you think that or how do you know that, at that point he
23 shouldn't answer. He shouldn't say: Oh, my attorney told me.

24 Does that make sense or not?

10:39AM 25 MR. SPILOTRO: My -- my -- my response to that would on

1 behalf of Dr. Kabins is, is it's the communication itself that is
2 privileged.

3 The fact that you're leaving out I learned it from my
4 lawyer doesn't, I believe, help the situation any.

10:39AM 5 Because if he just divulges those facts, he's now waived
6 the communication. And I don't want to go down a slippery slope
7 and start waiving attorney/client privilege. Okay.

8 And just the fact that the communication is revealed is
9 the issue. Not whether or not he says he learned it from his
10:40AM 10 lawyer.

11 MS. LOWRY: I agree.

12 And that was what I was not really clear on what -- what
13 you were going for, Mr. Bowers.

14 MR. MASSI: Then why don't -- then why don't we agree to
10:40AM 15 note this area of questioning, as we did the first.

16 MS. LOWRY: Okay.

17 MR. MASSI: I don't think Mr. Spilotro was here.

18 MS. LOWRY: Right.

19 MR. MASSI: When we said this would happen was right at
10:40AM 20 the beginning there was a question, we almost recessed and decided
21 not to rather than delay, anything that comes up like this, what
22 we'll do is note them and ask the court reporter to note them.

23 And then, when necessary, we'll submit it to
24 Judge Johnston and -- and let him make the decision whether it's
10:40AM 25 right or wrong.

1 BY MR. MASSI:

2 Q Okay. You told me what you personally thought, and I'm
3 going to ask this in the same context, not what your lawyers told
4 you but what you personally thought Mr. Bergman did wrong.

10:59AM 5 I want you to tell me in your opinion specifically what
6 you think Benessere, LLC, Cipriani, LLC, and Gila Bend, LLC, only,
7 did that caused you any damage?

8 MS. LOWRY: Objection, form.

9 THE WITNESS: That is 100 percent attorney/client
11:00AM 10 privilege.

11 I have no answer outside of the attorney/client
12 privilege.

13 BY MR. MASSI:

14 Q In other words, your entire understanding of what they
11:00AM 15 did wrong is based on what your attorney told you?

16 A Correct.

17 Q Okay. What monetary --

18 MR. BOWERS: I'm sorry, let's mark that because it --

19 MR. MASSI: That one too?

11:00AM 20 MR. BOWERS: Sure. Yeah. I mean I think we need to
21 resolve this. I have a disagreement about -- we have a
22 disagreement about how the privilege works as to facts.

23 MR. MASSI: Okay. Go ahead and mark that one, too,
24 please. That will be the fourth one, I believe.

25

1 actions and activities -- or activities of the LLCs, Benessere,
2 Cipriani, and Gila Bend?

3 MS. LOWRY: Objection, form and compound.

4 THE WITNESS: I don't --

11:01AM 5 THE REPORTER: Form and what?

6 MS. LOWRY: Compound.

7 THE REPORTER: Thank you.

8 MR. MASSI: I can do one at a time if you want.

9 Do you want me to do one at a time?

11:01AM 10 MS. LOWRY: Please do one at a time.

11 BY MR. MASSI:

12 Q What -- what loss, if any, of the entities, the party
13 plaintiffs in this case, sustained as a result of the actions and
14 activities of Gila Bend LLC, the LLC?

11:02AM 15 A I don't know.

16 Q What losses, if any, have the entities that are party
17 plaintiffs in this case, sustained as a result of the actions and
18 activities of Benessere, LLC?

19 A I don't know.

11:02AM 20 Q What losses, if any, have the entities, the party
21 plaintiffs in this case, sustained as a result of the actions or
22 activities of Cipriani, LLC?

23 A Same answer, I don't know.

24 Q What, if anything, did any of the members of any of these
11:02AM 25 three entities do that caused your party plaintiffs or you

1 personally, your party plaintiffs or you personally, any monetary
2 loss?

3 MS. LOWRY: Objection, form.

4 And I'm going to instruct the witness not to answer to
11:02AM 5 the extent that answer would require the disclosure of
6 communications between Dr. Kabins and his attorneys.

7 MR. MASSI: Note that one too.

8 BY MR. MASSI:

9 Q But go ahead and answer the question if it doesn't
11:02AM 10 require you to tell me what your attorney told you.

11 A No, it -- it -- it -- it's based on attorney/client
12 conversation, education.

13 MR. MASSI: Note that one.

14 BY MR. MASSI:

11:03AM 15 Q Also -- I'm going to go back and ask the question a
16 different way.

17 Do you have any personal knowledge that any member of
18 Benessere, Gila Bend, or Cipriani, caused you or the -- or the
19 party plaintiff entities in this case any damages, any monetary
11:03AM 20 damages?

21 MS. LOWRY: Same objections, also calls for a legal
22 conclusion.

23 MR. BOWERS: Oh -- I'm sorry.

24 BY MR. MASSI:

11:03AM 25 Q Go ahead. You can answer.

1 A Again, it -- I have to rely on my conversations with my
2 attorneys as it relates to that.

3 MR. SPILOTRO: You asked a question, Al, if I may.

4 You said: Do you have any personal knowledge?

11:03AM 5 MR. MASSI: Yeah, personal knowledge.

6 MR. SPILOTRO: Well, his personal knowledge can be
7 learned from an attorney.

8 I think the question is: Do you know of any facts or
9 anything outside of an attorney/client context?

11:03AM 10 MR. MASSI: Let me ask -- let me ask it again a different
11 way, another different way.

12 BY MR. MASSI:

13 Q Do you have any personal knowledge, independently or
14 personally gathered by yourself, without input from your

11:04AM 15 attorneys, that Gila Bend members, Benessere members, or Cipriani
16 members caused you any personal damages, either you or the
17 entities, monetary or otherwise?

18 MS. LOWRY: Objection; form, vague and ambiguous, and
19 calls for a legal conclusion.

11:04AM 20 BY MR. MASSI:

21 Q Go ahead and answer.

22 A As relates to monetary damages, once again, it goes back
23 to attorney/client privilege.

24 MR. MASSI: Go ahead.

11:04AM 25

CERTIFICATE OF REPORTER

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Renee Silvaggio, a duly commissioned notary public,
Clark County, State of Nevada, do hereby certify:

That I reported the deposition of MARK KABINS, M.D.,
commencing on Wednesday, May 4, 2011, 9:00 a.m.

That prior to being deposed, the witness was duly sworn
by me to testify to the truth.

That I thereafter transcribed my said shorthand notes
into type writing, and that the typewritten transcript is a
complete, true, and accurate transcription of my said shorthand
notes.

I further certify that I am not a relative or employee of
counsel or any of the parties, nor relative or employee of the
parties involved in said action, nor a person financially
interested in the action.

IN WITNESS WHERE OF, I have set my hand and affixed my
official seal in my office in the County of Clark, State of
Nevada, on this 7th day of May 2011.

RENEE SILVAGGIO, CCR NO. 122